STATE OF MICHIGAN

COURT OF APPEALS

JACK PEET, and all others similarly situated,

Plaintiffs-Appellees,

v

THE SWEET ONION, INC., d/b/a COMFORT INN/UNIVERSITY PARK, and LABELLE MANAGEMENT COMPANY,

Defendants-Appellants.

UNPUBLISHED
March 17, 2005

No. 251736
Isabella Circuit Court
LC No. 02-001963-NO

Before: Murray, P.J., and Markey and O'Connell, JJ.

PER CURIAM.

Defendants appeal by leave granted from the trial court's order granting plaintiff's[1] motion for class certification. We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On separate dates, defendants hosted a wedding attended by 200 people, an anniversary party attended by 50 people, and a management conference attended by 300 people. A percentage of the people who attended each event became ill after eating food prepared and served by defendants. Plaintiff, who became ill after the conference, filed a class action complaint on behalf of himself and all other persons who became ill after attending one of the three events, alleging that defendants violated statutory law by serving them contaminated food. The trial court granted plaintiff's motion for class certification.[2]

Members of a class may only maintain a class action if "questions of law or fact common to the members predominate over questions affecting only individual members." MCR 3.501(A)(1)(b). We review a trial court's ruling on a motion for class certification for clear error. *Zine v Chrysler Corp*, 236 Mich App 261, 270; 600 NW2d 384 (1999). A trial court's

[1] For ease of reference throughout this opinion, we refer to the singular plaintiff, Jack Peet.

[2] We granted defendants' application for leave to appeal the trial court's order and, on our own motion, stayed proceedings below pending resolution of the appeal or further order of this Court.

findings are clearly erroneous if no evidence exists to support them or if we are "left with a definite and firm conviction that a mistake has been made." *Id.* The party seeking class certification has the burden of proving that the action satisfies the commonality factor and each of the many other factors enumerated in MCR 3.501(A)(1). *A & M Supply Co v Microsoft Corp*, 252 Mich App 580, 597-598; 654 NW2d 572 (2002).

Defendants argue that the trial court clearly erred in finding that plaintiff established that the action met the commonality requirement for class certification. We agree. To satisfy the commonality requirement, the movant must demonstrate that the issues that apply to the class as a whole predominate over those requiring individual proof. *Neal v James*, 252 Mich App 12, 16-17; 651 NW2d 181 (2002). Here, the common question of fact is whether defendants served contaminated food at each of the three events. Thereafter, questions affecting only individual members of the class would remain, including whether a class member became ill after eating at one of the events, whether the illness was caused by eating food served at the event or by a pathogen from some other source, what symptoms each class member exhibited, the severity and duration of the symptoms, and what damages each class member sustained. These questions would be subject to the particularized proof from each potential victim and would obviously predominate over the simple, common question of fact. *Id*. For these same reasons, the class action method would not be superior to other methods of adjudication, because the individual proofs would either bog down the entire action, or the class would settle without any real consideration for an individual member's actual damages. MCR 3.501(A)(1)(e).

We reverse the trial court order certifying the class action and lift the stay previously imposed. We do not retain jurisdiction.

/s/ Christopher M. Murray
/s/ Jane E. Markey
/s/ Peter D. O'Connell